

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a)
certificate of public good, pursuant to)
30 V.S.A. § 248, authorizing the construction of)
the "Addison Natural Gas Project" consisting of)
approximately 43 miles of new natural gas)
transmission pipeline in Chittenden and Addison)
Counties, approximately 5 miles of new)
distribution mainlines in Addison County, together)
with three new gate stations in Williston, New)
Haven, and Middlebury, Vermont)

Order entered:

5/19/2016

ORDER RE REQUEST FOR A FOURTH NON-SUBSTANTIAL CHANGE DETERMINATION

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") grants the November 5, 2015, request by Vermont Gas Systems, Inc. ("VGS" or the "Company") for a determination that a proposed alignment reroute to the Addison Natural Gas Project (the "Project") in the vicinity of Rotax Road in Monkton does not constitute a substantial change that would require an amendment to the Project's certificate of public good ("CPG").

II. BACKGROUND

On December 23, 2013, the Board issued a final order (the "Final Order") granting a CPG to VGS authorizing the construction and operation of the Project.

On November 5, 2015, the Company filed a letter requesting a determination that a proposed alignment reroute in the vicinity of Rotax Road in Monkton, Vermont (the "Reroute") does not constitute a substantial change to the Project (the "VGS Request"). This was VGS's fourth request for a non-substantial change determination in this Docket. The VGS Request

included a non-substantial change summary memorandum with supporting attachments documenting the proposed changes.

On November 12, 2015, the Board requested that the parties file any comments on the VGS Request by November 30, 2015.

On November 25, 2015, Nathan and Jane Palmer (the “Palmers”) filed comments on the VGS Request (the “Palmer Comments”). The Palmers offered comments together with an affidavit from their hydrogeologist, Craig Heindel, raising concerns that the Reroute could “collect groundwater and funnel it to an existing groundwater seep” on the Palmer property.¹ The Palmers recommended that VGS conduct a hydrogeological investigation to evaluate these concerns and implement certain drain and swale design recommendations proposed by Mr. Heindel.

On November 30, 2015, the Vermont Agency of Natural Resources (“ANR”) and the Town of Monkton (“Monkton”) each filed comments on the VGS Request. ANR requested that the Board stay any determination on the VGS Request until ANR had an opportunity to review anticipated permit amendment applications (the “ANR Comments”). Monkton requested that the Board ensure that appropriate review was conducted of an archeologically sensitive area along the proposed Reroute (the “Monkton Comments”).

On December 3, 2015, the Company filed a response to the ANR, Monkton, and Palmer Comments (the “VGS Comments”). The Company: (1) advised that it did not oppose ANR’s request for a stay; (2) submitted a supplemental memorandum from its archeological consultant in response to Monkton confirming that the Reroute would avoid sensitive archeological resources; and (3) represented that it intended to contact the Palmers and their hydrogeologist to address their concerns and work toward a possible resolution.

On December 4, 2015, the Vermont Department of Public Service (“DPS” or the “Department”) filed comments (the “DPS Comments”) advising that the VGS Request did not involve a substantial change to the Project and addressing the Palmer, ANR, Monkton, and VGS

1. Attachment 1 to Palmer Comments.

Comments. The Department also reiterated its position that “a post-construction aesthetics review of the entire Project will be beneficial.”²

On February 3, 2016, based on the Palmer Comments, the Board issued a procedural order assigning a hearing officer, pursuant to 30 V.S.A. § 8, to conduct a post-certification³ proceeding to assess and make recommendations as to whether the Reroute has the potential to have a significant impact with respect to 30 V.S.A. § 248(b)(5).

On April 22, 2016, the Company filed supplemental memoranda updating its response to comments from the Palmers, ANR, and Monkton (the “Attachment 1 and 2 Supplement(s),” respectively).

On April 29, 2016, the Company filed a memorandum of agreement entered into by VGS and the Palmers (the “MOA”). In the MOA, the Company agrees to implement certain site improvements. The Company and the Palmers agree that the Reroute, subject to the MOA, does not have the potential for significant impact under Section 248(b)(5). They also agree that the Board may rely on the MOA in making a determination on the VGS Request. Also on April 29th, the Department advised that it had reviewed the MOA and comments from ANR,⁴ and, given the resolution of the concerns of the Palmers and ANR reflected in those documents, it supported the VGS Request.

On May 2, 2016, ANR filed comments indicating that it had reviewed all of the VGS collateral permit applications required by the Reroute and the MOA (the “ANR Conclusion”). ANR concludes that the VGS Request does not have the potential for significant impact on natural resources provided that the Company obtains a separate permit from the Vermont Department of Environmental Conservation (“DEC”) to discharge stormwater in connection with the proposed site improvements agreed upon in the MOA. Also on May 2nd, the hearing officer issued an order requesting that any additional comments on the VGS Request be filed by May 9, 2016.

No additional comments on the VGS Request were filed.

2. Letter from Louise C. Porter, Esq., to Susan M. Hudson, Clerk of the Board, dated December 4, 2015.

3. See Docket 7970, Order of 4/2/14 at 2.

4. Dated April 27, 2016, and filed with the Board on May 2, 2016.

III. NON-SUBSTANTIAL CHANGE DETERMINATION

Board Rule 5.408 states:

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the state under Section 248(a).

Additionally, the Project's CPG requires that:

Construction, operation and maintenance of the proposed Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or a substantial change to the Project must be approved by the Board.⁵

The Reroute proposed in the VGS Request would relocate the pipeline off of the Palmers' property and onto the property of another landowner. The Reroute also installs certain improvements on that landowner's land uphill from the Palmers' property to reduce the risk of water seepage onto the Palmers' property. VGS represents that the Reroute will reduce cost and schedule risk. The Company has represented, through the opinions of three experts and its Project manager, that the VGS Request will not have a significant impact under the applicable Section 248 criteria. VGS has also advised that the cost estimate for the Project of approximately \$154 million does not need to be modified as a result of the proposed changes.⁶

Specifically, the Company has represented through a natural resource assessment memorandum and its supplementary memorandum that the VGS Request will not have a significant impact on any of the Section 248 natural resource criteria.⁷ The natural resource assessment memorandum summarized that the proposed changes in the VGS Request "would reduce impacts to [sic] natural features while improving the constructability of the Project."⁸

5. Docket 7970, Certificate of Public Good, 12/23/13.

6. Attachment 1 Supplement.

7. VGS Request Attachment 2 and Attachment 2 Supplement.

8. VGS Request Attachment 2 at 6.

VGS's supplementary natural resources memo also addressed the site improvements to reduce water seepage and stated that these additional measures do not have the potential for significant impact.⁹ ANR concludes that the changes proposed in the VGS Request, including the site improvements agreed upon in the MOA, "do not have the potential for significant impact to natural resources as long as VGS complies with the amended collateral permits."¹⁰

Additionally, based on its aesthetics consultant's conclusions in an aesthetics review memorandum, the Company represents that the Reroute "is minor with respect to aesthetics because it would not materially change Project visibility."¹¹ The memorandum concludes that the Reroute changes "do not change [the] previous conclusion that the Project will not result in an undue adverse impact."¹² The Department states that it has reviewed the VGS Request and "agrees with VGS that these changes are non-substantial and continues to believe that a post-construction aesthetics review of the entire Project will be beneficial to address needs regarding impacts of additional necessary mitigation."¹³

Finally, VGS represents that the proposed modifications do not have the potential for significant impact on archaeological sites or historic properties, based on the Company's archeological and historical resources memorandum.¹⁴

Therefore, based on the Company's representations in its memoranda, the Company's MOA with the Palmers, the support of the Department and ANR, and the lack of other comments regarding the MOA, we find that the changes to the Project proposed in the VGS Request do not have the potential to create significant impacts under the Section 248 criteria. Accordingly, we will not require that VGS file for an amendment to its CPG to seek approval for the Reroute. We condition this conclusion on the Company: (1) obtaining a separate permit from the DEC to discharge stormwater in connection with the proposed site improvements agreed upon in the MOA; (2) complying with amended collateral permits issued by the DEC; and (3) conducting a

9. Attachment 2 Supplement.

10. ANR Conclusion.

11. VGS Request at 4.

12. *Id.*

13. DPS Comments at 2.

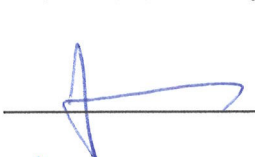

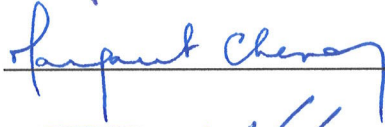
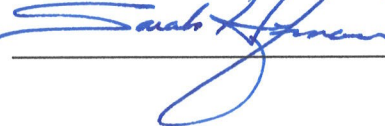

14. VGS Request at 5 and VGS Request Attachment 4.

post-construction aesthetics review of the entire Project including the Reroute to address any additional needs regarding impacts or necessary mitigation.

Furthermore, because the Project's CPG requires that construction of the Project be done in accordance with the plans and evidence submitted, we hereby admit into the record in this Docket the revised plans submitted in support of the VGS Request that pertain to the Reroute.

SO ORDERED.

Dated at Montpelier, Vermont, this 19th day of May, 2016.

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)	PUBLIC SERVICE
)	BOARD
)	OF VERMONT

OFFICE OF THE CLERK

FILED: May 19, 2016

ATTEST: Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.